

1
2
3
4
5
6
7
8 **UNITED STATES DISTRICT COURT**

9 **NORTHERN DISTRICT OF CALIFORNIA (San Francisco)**

10 SUSAN BREWER, a individual; ADLAI
11 BELL, a individual; WILLIAM BURR, a
12 individual; JANICE COATES, a
13 individual; FRANK DICICCO, a
14 individual; JACQUELYN SIMMONS, a
15 individual; JOHN M. FERIN, a individual;
EDWARD DUGGAN, a individual;
DENNIS D. PHILLIPS, a individual; EVA
SCOTT, a individual,

16 Plaintiff(s),

17 v.

18 DEPUY ORTHOPAEDICS, INC.;
19 JOHNSON & JOHNSON SERVICES,
20 INC.; JOHNSON & JOHNSON, INC.;
21 THOMAS P. SCHMALZRIED, M.D., A
PROFESSIONAL CORPORATION; and
DOES 1 through 20, inclusive,

22 Defendants.

CASE NO. 3:12-cv-1473 CD

**~~PROPOSED~~ ORDER TO EXTEND TIME
TO RESPOND TO COMPLAINT (L.R. 6-1)**

Complaint served: February 22, 2011

Removal Date: March 23, 2012

Current Response Date: April 29, 2012

Agreed Response Date: After ruling on
pending motions

23
24 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

25 Defendant Thomas P. Schmalzried, M.D., A Professional Corporation (“Defendant”)
26 hereby requests, and Plaintiffs Susan Brewer, Adlai Bell, William Burr, Janice Coates, Frank
27 DiCicco, Jacquelyn Simmons, John M. Ferin, Edward Duggan, Dennis D. Phillips, and Eva
28 Scott, (“Plaintiffs”) hereby agree to Defendant’s request, for an extension of time for Defendant

1 to file a response to Plaintiffs' Complaint as follows:

2 WHEREAS, Plaintiffs' Complaint was filed in state court on February 21, 2012 and
3 Defendant was served on or about February 22, 2012;

4 WHEREAS, this matter was removed to this court by the other defendants on March 23,
5 2012;

6 WHEREAS, Defendant and Plaintiffs previously stipulated to a 30-day extension of time
7 for Defendant to respond up to April 29, 2012;

8 WHEREAS, since the above noted stipulation was filed, the following has occurred in
9 this matter:

10 1) A Conditional Transfer Order regarding the transfer of this matter to MDL
11 No. 2244, *In Re: DePuy Orthopaedics, Inc., Pinnacle Hip Implant Products Liability Litigation*,
12 was filed on April 4, 2012, which order was opposed by Plaintiffs on April 10, 2012. Plaintiffs'
13 motion to vacate this order was filed on April 11, 2012. DePuy will oppose this motion and its
14 response is due May 16, 2012.

15 2) On April 4, 2012, DePuy filed a Motion to Stay pending transfer to MDL No.
16 2244, which motion Plaintiffs have opposed. The stay motion is set for hearing on June 4, 2012.

17 3) On April 11, 2012, Plaintiffs filed a Motion to Remand this action to the Superior
18 Court for the County of San Francisco. DePuy will oppose the remand motion, which is also set
19 for hearing on June 4, 2012.

20 WHEREAS, all of the issues described above remain unresolved at present, leaving
21 doubt as to which court this matter will ultimately be litigated in and what manner of response
22 would be consistent with the rules and procedures of that court. Given the pending motions and
23 conditional transfer order, it appears this matter will not be litigated in the Northern District of
24 California in any case.

25 WHEREAS, Defendant requests an extension of time to respond to Plaintiffs' complaint
26 until such time as the venue and jurisdiction of this matter is resolved, and Plaintiffs have agreed.
27 This will avoid unnecessary confusion and additional complication while the pending motions
28 and issues are addressed and resolved, as well as avoid duplicative law and motion, since

1 Defendant will respond with a Rule 12(b) motion to dismiss if forced to respond currently, which
2 motion would address many of the same issues already addressed by Plaintiffs' Motion to
3 Remand and DePuy's opposition thereto. As such, this extension will allow the parties sufficient
4 time and opportunity to further meet and confer on the claims and causes of action asserted in the
5 complaint with the goal of potentially avoiding future motions by Defendant, particularly in light
6 of the resolution of the issues already pending. Thus, this extension of time allows the Court to
7 resolve these issues of jurisdiction and venue before Defendant responds to the Complaint.

8 THEREFORE, the parties agree that the response of Defendant Thomas P. Schmalzried,
9 A Professional Corporation to the Complaint shall be due at the earlier of these two potential
10 days:

- 11 1. 20 days after the United States Judicial Panel on Multidistrict Litigation rules on
12 whether to transfer this matter to MDL No. 2244, *In Re: DePuy Orthopaedics,*
13 *Inc., Pinnacle Hip Implant Products Liability Litigation*; or,
- 14 2. 30 days after this Court grants Plaintiffs' Motion to Remand, if such a ruling
15 occurs.

16
17
18 **IT IS SO ORDERED.**

19
20 **DATED:** 04/25/2012 _____

